

46 Am. Jur. 2d Judges § 89

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

2. Interests as Grounds for Disqualification

a. Interests as Grounds for Disqualification, in General

§ 89. Nature of interest of judge as grounds for disqualification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  42 to 44

Generally, a judge must disqualify him- or herself whenever the judge knows that he or she has a financial or other interest that could be affected by the outcome of the proceedings.¹ Under some authority, such personal interest need not be pecuniary; it need only be an interest which can be viewed as having a potentially negative effect on the impartiality of the decision maker.² Any interest, the probable and natural tendency of which is to create bias in the mind of the judge for or against the party to the suit, is sufficient to disqualify.³ In some jurisdictions, however, a statute that disqualifies a judge in any case where he or she is "interested" has been interpreted to mean that the interest is pecuniary in nature.⁴

The Code of Judicial Conduct specifically requires the judge to disqualify him- or herself when the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy.⁵

The federal statute regarding the disqualification of judges requires disqualification where the judge knows that he or she, individually or as a fiduciary, or his or her spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.⁶

Observation:

A distinction has been made between a private interest versus a public interest in the subject matter or outcome of the proceedings. A public interest is one shared by other citizens, and a judge's interest as a citizen in a public issue is not a basis per se for removal as a trial judge. When a public interest is at issue a judge can remove him- or herself, but a refusal to do so is not reversible error unless his or her interest is so great that his or her decision would be tainted. If a trial judge's decision would affect him or her in a pecuniary way, however, this constitutes a private interest, and a trial judge then has no alternative other than to disqualify him- or herself.⁷

CUMULATIVE SUPPLEMENT

Cases:

Trial court judge had duty to disqualify himself in order to avoid appearance of impropriety, at class certification stage of water consumers' putative class action against water provider, seeking damages arising out of alleged exposure to pollutants in water supply, where judge was a potential class member and could have been entitled to recover financially if action were successful. [W.Va. Code of Jud. Conduct, Canon 2. State ex rel. Municipal Water Works v. Swope, 835 S.E.2d 122 \(W. Va. 2019\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [Matter of Yaccarino, 101 N.J. 342, 502 A.2d 3 \(1985\).](#)
- 2 [Easter House v. Department of Children and Family Services, 204 Ill. App. 3d 312, 149 Ill. Dec. 570, 561 N.E.2d 1266 \(1st Dist. 1990\).](#)
As to pecuniary interests of judges as grounds for disqualification, generally, see §§ 92 to 97.
- 3 [Easter House v. Department of Children and Family Services, 204 Ill. App. 3d 312, 149 Ill. Dec. 570, 561 N.E.2d 1266 \(1st Dist. 1990\).](#)
- 4 [Rosemond v. Prudential Property & Cas. Ins. Co., 170 Ga. App. 189, 316 S.E.2d 541 \(1984\);](#) [Edwardsen v. State, 243 Md. 131, 220 A.2d 547 \(1966\);](#) [State v. Gillette, 218 Neb. 672, 357 N.W.2d 472 \(1984\).](#)
For a judge to be disqualified based on an interest in the proceedings, that interest must generally be either a direct pecuniary interest or a property interest in the subject matter of the litigation. [In re H.M.S., 349 S.W.3d 250 \(Tex. App. Dallas 2011\).](#)
- 5 § 92.
- 6 § 92.
- 7 [Zoline v. Telluride Lodge Ass'n, 732 P.2d 635 \(Colo. 1987\).](#)

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